IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

S.B. Civil Writ Petition NO.4864/2002

Jodhpur Kriya Vikraya Sahkari Samiti Ltd. & Anr.

Vs.

Rajasthan State Cooperative Tribunal, Jaipur.

Date of Order : 11-12-2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. Rajesh Joshi, for the petitioner.
Mr. R.S. Saluja, for the respondents.

Heard learned counsel for the parties..

Brief facts of the case are that a dispute was referred to the Arbitrator under the provisions of the Rajasthan State Cooperative Societies Act, 1965 under Section 77(1)(a) as the dispute was raised by the non-petitioner for M/s. Jetha Ram's Company. The Arbitrator after hearing both the parties passed the award dated 6.12.2000, copy of which is placed on record as Annexure-8. The petitioner preferred appeal before the Rajasthan State Cooperative Tribunal, Jaipur to challenge the said award dated 6.12.2000 on 22.6.2001. The petitioner submitted an

application for condonation of delay. In the application, petitioner submitted that petitioner came to know about the impugned award only on 26.4.2001 on receipt the information from the said firm. The petitioner immediately on getting information about the passing of the award applied for certified copy of the award on 28.4.2001. The certified copy of the award was given to the petitioner on 2.5.2001, therefore, the petitioner submitted the appeal on 22.6.2001. On these facts the petitioner sought condonation of delay.

The Tribunal rejected the prayer of the petitioner for condonation of delay in filing the appeal vide order dated 11.1.2002. The petitioner, therefore, has challenged the order dated 11.1.2002 by preferring this writ petition before this Court.

Learned counsel for the respondents raised preliminary objection that the writ petition has been filed after inordinate delay, therefore, only on this ground, the writ petition may be dismissed.

Learned counsel for the petitioner submitted that petitioner firm's representatives were not present when the award dated 6.12.2000 was passed. It is also submitted that after hearing the arguments, learned Arbitrator was required to fix any date for passing the award. Since date

for passing award was not fixed, therefore, the Arbitrator should have given notice to the petitioner before passing award. No prior intimation was given to petitioner about date for pronouncement of the award. It is submitted that petitioner got the information only when petitioner received the respondent firm's intimation dated 18.4.2001 which reached to the petitioner on 26.4.2001. Rest of the facts explaining the delay are mentioned above.

Before the Tribunal, the respondent firm took a plea that the copy of the award dated 6.12.2000 itself was delivered to the petitioner's representative Ikramuddin Qazi and his signatures were obtained. It is also submitted that the respondent firm sent letters to the petitioners on 18.3.2001, 18.4.2001 and 10.5.2001, therefore, the petitioner had noticed of the award from 7.12.2000 and thereafter on 18.3.2001 also.

The Tribunal considered the submissions and thereafter held that the letters were given by the respondent firm to the petitioner on 18.3.2001, 18.4.2001 and on 10.5.2001 by ordinary post or by registered post. However, the Appellate Authority held that the copy of the award was delivered to the petitioner's representative. This finding was recorded only on the basis of the affidavits of the respondent firm.

The Tribunal after holding that the appeal was barred by time, dismissed the prayer of condonation of delay and, consequently dismissed the appeal.

According to learned counsel for the petitioner, when no date was fixed for passing award and when there was no prior intimation of fixing a date of pronouncement of the award, then the limitation cannot run against the party against whom the award has been passed till the party come to know about the award. According to learned counsel for the petitioner, this Court has already taken the same view in the case of Mahuva Sahakari Upbhokta Bhandar Ltd. Vs. Rajasthan Rajya Sahakari Nyayadhikaran, Jaipur & Anr. reported in 2002 WLC (Raj.)UC 288.

It appears from the facts of the case that the award was passed on 6.12.2000. So far as the finding of the appellate Authority that the copy of the award was delivered to the representative of the petitioner is concerned, it is based only on the submissions of the respondent firm who submitted an affidavit in support of his contention. The Tribunal has not recorded the finding that any receipt is available on record evidencing the delivery of the copy of the award to the representative of the petitioner. Learned counsel for the petitioner submitted that in fact, even the petitioner's advocate admitted before the Appellate Authority that the petitioner

got the copy of the award and, therefore, in fact it is an admitted case of delivery of copy of the award to the representative of the petitioner.

A bare perusal of the reading of the award , it reveals that that was not the view of the Appellate Authority. The Appellate Authority, therefore, considered the other aspects of the matter like sending information by the respondent firm to the petitioner. So far as the admission of the learned counsel for the petitioner, as recorded in the impugned order, is that the learned counsel only accepted that the petitioner received the information of the award dated 6.12.2000 and it is not an admission of a fact that the copy of the award was received by Ikramuddin or Ikramuddin was the representative of the petitioner or from the Ikramuddin, the petitioner got the knowledge of the award dated 6.12.2000.

In totality of the facts of the case, the delay in filing the appeal if taken from the date of knowledge, then virtually there is no delay because of the reason that the petitioner got the information about the award only on 26.4.2001 and applied for the certified copy on 28.4.2001 and got the certified copy on 2.5.2001 and thereafter, preferred the appeal on 22.6.2001. Therefore, from the date of knowledge, the appeal was preferred within a period of 60 days. The judgment relied upon by the learned counsel

for the petitioner covers the facts of the case and otherwise also, in a case when the award is passed without fixing of date and without giving any prior intimation to the parties, then the litigation cannot run till the parties get the knowledge of the award.

In view of the above, the Tribunal should have considered this aspect of the matter and should have condoned the delay.

Further reason is that the total delay in such a matter where the award has been passed and the petitioner has submitted an application for condonation of delay explaining reasons which are apparently not false in any manner, then a liberal view should have been taken by the appellate Authority for condonation of delay. There appears to be no allegation of malafide against the petitioner in filing the appeal late, therefore also, the delay should have been condoned.

In view of the above, the writ petition of the petitioner deserves to be allowed, hence allowed. The order of the Rajasthan State Cooperative Societies Tribunal dated 11.1.2002 is set aside. The application filed by the petitioner for condonation of delay is allowed. The matter is remanded back to the learned Rajasthan State Cooperative Societies Tribunal, Jaipur. Both the parties are directed

to appear before the Tribunal on 17.1.2005. The Tribunal may decide the appeal on merits within a period of three months from the date of receipt of the order. The order may be submitted by both the parties before the Tribunal.

[PRAKASH TATIA],J.

Praveen